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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **WESTERN DIVISION**

12 SCOTT HARGIS, d/b/a SCOTT
13 HARGIS PHOTO, an individual,

14 Plaintiff,

15 v.

16
17 PACIFICA SENIOR LIVING
18 MANAGEMENT LLC, a California
19 limited liability company, and DOES 1
through 10,

20 Defendants.
21

Case No. 2:22-cv-06989

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT
(17 U.S.C. § 501)**

DEMAND FOR JURY TRIAL

1 Plaintiff Scott Hargis, d/b/a Scott Hargis Photo, complains against Pacifica
2 Senior Living Management LLC and DOES 1 through 10 (collectively,
3 “Defendants”) as follows:

4 **JURISDICTION AND VENUE**

5 1. This is an action for damages and injunctive relief against Defendants
6 for, *inter alia*, willful, direct, contributory, and vicarious copyright infringement in
7 violation of the Copyright Act of the United States, 17 U.S.C. §§ 101, *et seq.*

8 2. This Court has subject matter jurisdiction over this copyright
9 infringement action pursuant to 28 U.S.C. § 1331, 17 U.S.C. § 501(a) and 28 U.S.C.
10 § 1338(a).

11 3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and
12 (c) and 28 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the
13 Defendants may be found and transact business in this Judicial District, and the
14 injury suffered by Plaintiff took place in this Judicial District. Pacifica Senior Living
15 Management LLC is subject to the general and specific personal jurisdiction of this
16 Court because of its contacts with the state of California. Specifically, on
17 information and belief, it owns and operates 48 senior living in California, with its
18 principal place of business in San Diego, California. Six of the seven senior living
19 communities to which the photographs serving as the subject matter of this dispute
20 pertain are also located in the state of California, specifically in the cities of Fresno,
21 Sun City, Encinitas, Chula Vista, Rancho Penasquitos and Burlingame. The seventh
22 community is in Sterling, Virginia.

23 **PARTIES**

24 4. Plaintiff Scott Hargis, d/b/a Scott Hargis Photo, (“Plaintiff” or
25 “Hargis”) is an individual residing in Oakland, California.

26 5. On information and belief, Defendant Pacifica Senior Living
27 Management LLC (“Pacifica”) is a limited liability company existing under the laws
28 of the state of California with its principal place of business at 1775 Hancock Street

1 Suite 200, San Diego, CA 92110.

2 6. DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore
 3 sues said Defendants by such fictitious names. Plaintiff will ask leave of Court to
 4 amend this Complaint and insert the true names and capacities of said Defendants
 5 when the same have been ascertained. Plaintiff is informed and believes and, upon
 6 such, alleges that each of the Defendants designated herein as a “DOE” is legally
 7 responsible in some manner for the events and happenings herein alleged, and that
 8 Plaintiff’s damages as alleged herein were proximately caused by such Defendants.

9 **STATEMENT OF FACTS**

10 ***Plaintiff and the Photographs Forming the Subject Matter of This Dispute***

11 7. Scott William Hargis is a widely recognized architectural photographer
 12 based in the San Francisco Bay area. Hargis' photographs have appeared in
 13 numerous publications including *This Old House*, *Luxe Magazine*, *Dwell*, *The New*
 14 *York Times*, *The Wall Street Journal*, *Oakland Magazine*, *San Francisco Magazine*,
 15 *Diablo Magazine*, *Better Homes & Gardens*, *The San Francisco Chronicle*, and *The*
 16 *Los Angeles Times*.

17 8. Hargis is sought after by architectural and design firms around the
 18 world, including Woods Bagot, Gensler, Handel, SOM, and many others.

19 9. He is the author of the acclaimed book “The Essential Guide To
 20 Lighting Interiors,” and frequently travels throughout North America and the world
 21 on assignment. A member of the International Association of Architectural
 22 Photographers, Hargis shares his expertise with students at workshops throughout
 23 North America, Europe, Australia, and the Middle East.

24 10. Hargis is the photographer who authored a compelling series of 43
 25 photographs depicting the Fresno, Sun City, Encinitas, Chula Vista, Rancho
 26 Penasquitos, Burlingame and Sterling locations of the Pacifica communities. These
 27 43 photographs serve as the subject matter of this dispute and will hereinafter be
 28 referred to collectively as “Photos,” true and correct copies of which are attached as

1 Exhibit A. Each individual Photo was registered timely with the United States
 2 Copyright Office on or around February 20, 2019, under registration number VA 2-
 3 140-916. As the author of the Photos, Hargis enjoys, among other things, the
 4 exclusive right to publicly display, reproduce, and distribute said Photos.

5 ***Pacifica and Its Infringing Conduct***

6 11. Pacifica is a provider of independent living, assisted living, memory
 7 care and respite care services for seniors in California, Washington, Oregon, Idaho,
 8 Nevada, Utah, Arizona, New Mexico, Texas, Virginia, Rhode Island, North
 9 Carolina, South Carolina, and Florida. According to its website, “Pacifica ranks in
 10 the top 20 of the largest providers of senior living nationwide.”

11 12. On information and belief, Pacifica owns, operates, and/or controls
 12 multiple senior living communities in the United States, including the senior living
 13 communities in the cities of Fresno, Sun City, Encinitas, Chula Vista, San Diego,
 14 Burlingame and Sterling and owns, operates, and/or controls the websites
 15 advertising and promoting said communities, which are located at the URLs
 16 <https://www.pacificaseniorlivingfresno.com>, <https://www.pacificamenifee.com>,
 17 <https://www.pacificaencinitas.com>,
 18 <https://www.pacificaseniorlivingburlingame.com>, <https://www.pacificabonita.com>,
 19 <https://www.pacificaranchopenasquitos.com>, and
 20 <https://www.pacificaseniorlivingsterling.com> (collectively, the “Pacifica
 21 Websites”).

22 13. Pacifica has—without consent or license—reproduced, distributed, and
 23 publicly displayed the Photos on the Pacifica Websites for blatantly commercial
 24 purposes.

25 14. Pacifica has exploited the Photos—which depict the Fresno, Sun City,
 26 Encinitas, Chula Vista, San Diego, Burlingame and Sterling locations of the Pacifica
 27 communities in an idyllic and picturesque light—to entice prospective senior living
 28 residents and their families to choose Pacifica over competitor senior living

1 communities. Attached hereto as Exhibit B are true and correct screenshots
2 evidencing Pacifica's unauthorized commercial exploitation of the Photos. As these
3 screenshots demonstrate, Pacifica has used the Photos to attract website visitors
4 to, among other things, "schedule a tour" of various Pacifica locations and "connect
5 with [Pacifica's] friendly team today," thereby making its use thereof unmistakably
6 commercial.

7 15. Pacifica's acts of infringement are willful because, *inter alia*, it is a
8 sophisticated for-profit business with full knowledge of the strictures of federal
9 copyright law and the basic requirements for licensing copyrighted content for
10 commercial exploitation. In fact, and among other things, as the owner of various
11 copyrights and trademarks, Pacifica actively polices and vigorously protects its own
12 intellectual property rights from infringement, as demonstrated by the '©' copyright
13 notice featured at the bottom of its website.

14 16. Moreover, and most notably, despite repeated notice by representatives
15 of Plaintiff to Pacifica of its acts of infringement, many of the Photos remained
16 featured on Pacifica's Websites following the provision of such specific notice. As
17 such, Pacifica's infringing conduct is unmistakably willful.

18 17. Specifically, on or around April 1, 2021, Plaintiff's representative
19 emailed Pacifica notifying it of Hargis' copyrights in 16 of the 43 Photos featuring
20 the Fresno and Sun City locations (hereinafter, the "First Set") and the infringing
21 nature of Pacific's unauthorized use of the First Set. Despite subsequent
22 communications with Pacifica from Plaintiff's representatives that reiterated the
23 infringing nature of Pacifica's conduct, detailed specific rebuttals to Pacifica's
24 claimed defenses and provided additional documentation to substantiate the
25 meritorious basis for Plaintiff's infringement claim, Pacifica continued to feature the
26 First Set on its website, without license or consent.

27 18. Indeed, it was not until April 26, 2021, that Pacifica claimed that it had
28 finally taken down the First Set. Unfortunately—and to make matters even worse—

1 this was a misrepresentation. Plaintiff's representative reached out once again to
2 Pacifica to inform them that the infringements were still live and even pointed
3 Pacifica to specific links showing the on-going infringing conduct. Meanwhile,
4 despite repeated efforts by Plaintiff's representatives to resolve this matter amicably,
5 Pacifica demurred, thereby necessitating this lawsuit.

6 19. Following the events referenced above, it came to Plaintiff's attention
7 that Pacifica was also infringing on the remaining 27 images of the 43 Photos
8 featuring the Encinitas, Chula Vista, San Diego, Burlingame and Sterling locations
9 (Second Set)—all despite Plaintiff's notifications and attempts to settle its dispute
10 regarding the First Set.

11 20. Meanwhile, to this day, Pacifica continues to willfully infringe
12 Plaintiff's Photos. For example, as of the filing of this Complaint, Pacifica was still
13 making active commercial use of Plaintiff's Photos in advertising at the
14 URLs [https://www.pacificaseniorlivingsterling.com/senior-](https://www.pacificaseniorlivingsterling.com/senior-living/va/sterling/photo-gallery)
15 [living/va/sterling/photo-gallery](https://www.pacificaseniorlivingsterling.com/senior-living/va/sterling/photo-gallery) and [https://www.pacificaseniorlivingsterling.com/find-](https://www.pacificaseniorlivingsterling.com/find-your-community#/locations?sortBy=state_then_city&state=CA&city=&searchRadius=20)
16 [your-](https://www.pacificaseniorlivingsterling.com/find-your-community#/locations?sortBy=state_then_city&state=CA&city=&searchRadius=20)
17 [community#/locations?sortBy=state_then_city&state=CA&city=&searchRadius=2](https://www.pacificaseniorlivingsterling.com/find-your-community#/locations?sortBy=state_then_city&state=CA&city=&searchRadius=20)
18 [0](https://www.pacificaseniorlivingsterling.com/find-your-community#/locations?sortBy=state_then_city&state=CA&city=&searchRadius=20). True and correct screenshots illustrating the continuing infringing activity by
19 Pacifica are attached as Exhibit C.

20 21. At all relevant times, therefore, Pacifica clearly knew of the need for
21 proper licensing of the Photos, failed to obtain proper authorization for the uses
22 detailed herein and continued its infringement after receiving specific notice about
23 its infringement conduct, making its infringement of the Photos unmistakably
24 willful.

25 22. On information and belief, Pacifica has garnered attention for its
26 Fresno, Sun City, Encinitas, Chula Vista, Rancho Penasquitos, Burlingame and
27 Sterling locations by featuring the Photos on its website. The Photos, which
28 highlight the on-site services, amenities, and sense of community Pacifica provides,

undoubtedly played a role in convincing prospective senior living residents and their families to choose Pacifica over competitor senior living communities. Among other things, this attention has translated into substantial ill-gotten commercial advantage and revenue generation for Pacifica, including but not limited to, revenue generated through housing fees, as a direct consequence of its infringing actions.

23. Although Plaintiff has repeatedly attempted to resolve this issue short of litigation, Pacifica has ignored multiple different attempts by Plaintiff to do so. As a result, Plaintiff has been left with no choice but to file suit to protect his basic intellectual property rights.

24. As a result of its (at least 43) willful acts of copyright infringement detailed herein, Defendants face statutory damages of (at least) up to \$6,450,000 for their unlawful actions.

FIRST CLAIM FOR RELIEF

(Copyright Infringement, 17 U.S.C. § 501)

25. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 24 above.

26. Plaintiff owns all copyrights in and to the Photos, which substantially consist of wholly original material that constitutes copyrightable subject matter under the laws of the United States.

27. Plaintiff has complied in all respects with the Copyright Act and all of the laws of the United States governing copyrights, and the Photos have all been timely registered with the United States Copyright Office.

28. Defendants have directly, contributorily, and/or vicariously infringed, and unless enjoined, will continue to infringe, Plaintiff's copyrights by reproducing, distributing, public displaying, and utilizing the Photos for purposes of trade in violation of 17 U.S.C. § 501 *et seq.*

29. Defendants have also knowingly induced, caused, or materially contributed to the infringing conduct of third parties and/or have obtained a direct

1 financial benefit therefrom while possessing the right and ability to control the
2 infringing conduct of third parties.

3 30. Defendants' actions are and have been willful and in wanton disregard
4 of Plaintiff's rights.

5 31. On information and belief, Defendants, despite such knowledge,
6 willfully reproduced, distributed, and publicly displayed the Photos on Pacifica
7 Websites.

8 32. Defendants have received substantial benefits in connection with the
9 unauthorized reproduction, distribution, display, and utilization of the Photos for
10 purposes of trade, including garnering the attention of prospective senior living
11 residents and their families over competitor senior living communities, thereby
12 generating revenue for Defendants through, among other things, housing fees.

13 33. The actions of Defendants are and were without the permission, license,
14 or consent of Plaintiff.

15 34. The wrongful acts of Defendants have caused, and are causing, great
16 injury to Plaintiff, of which damages cannot be accurately computed, and unless this
17 Court restrains Defendants from further and continuing commission of said acts,
18 Plaintiff will suffer irreparable injury, for all of which he is without an adequate
19 remedy at law. Accordingly, Plaintiff seeks a declaration that Defendants are
20 infringing his copyrights and an order under 17 U.S.C. § 502 enjoining Defendants
21 from any further infringement of Plaintiff's copyrights.

22 35. As a result of the acts of Defendants alleged herein, Plaintiff has
23 suffered, and is suffering, substantial damage to his business in the form of loss of
24 profits, injury to goodwill and reputation, and the dilution of the value of his rights,
25 all of which are not yet fully ascertainable.

26 36. Plaintiff is entitled to actual or statutory damages, at his election, in an
27 amount to be proven at trial for the infringement of the Photos. Pursuant to 17 U.S.C.
28 § 505, Plaintiff is also entitled to his attorneys' fees in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

1. For an order permanently enjoining Defendants, their officers, agents, servants, employees, representatives, and attorneys, and all persons in active concert or participation with them, be permanently enjoined from designing, copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all advertising and promotional materials, print media, signs, Internet websites, or any other media, either now known or hereafter devised, bearing any image or design which infringe, contributorily infringe, or vicariously infringe Plaintiff's rights in the photographs at issue.

2. For the entry of a seizure order directing the U.S. Marshal to seize and impound all items possessed, owned or under the control of Defendants, their officers, agents, servants, employees, representatives and attorneys, and all persons in active concert or participation with them, which infringe upon Plaintiff's copyrights, including but not limited to any and all broadcasting materials, advertising materials, print media, signs, Internet web sites, domain names, computer hard drives, servers or any other media, either now known or hereafter devised, bearing any design or mark which infringe, contributorily infringe, or vicariously infringe upon Plaintiff's copyrights in the photographs at issue as well as all business records related thereto, including, but not limited to, lists of advertisers, clients, customers, viewers, distributors, invoices, catalogs, and the like.

3. For actual damages and disgorgement of all profits derived by Defendants from their acts of copyright infringement and to reimburse Plaintiff for all damages suffered by him by reason of Defendants' acts, pursuant to 17 U.S.C. §§ 504 (a)(1) & (b).

4. For an accounting of all profits, income, receipts, or other benefit derived by Defendants from the reproduction, copying, display, promotion, distribution or sale of products and services, or other media, either now known or

1 hereafter devised, that improperly or unlawfully infringe upon Plaintiff's copyrights
2 pursuant to 17 U.S.C. §§ 504 (a)(1) & (b).

3 5. For costs and interest pursuant to 17 U.S.C. §§ 504 (a)(1) & (b) and 17
4 U.S.C. § 505.

5 6. For reasonable attorneys' fees incurred herein pursuant to 17 U.S.C. §
6 505.

7 7. For any such other and further relief as the Court may deem just and
8 appropriate.

9
10 Dated: September 27, 2022

ONE LLP

11
12 By: /s/John Tehranian

13 John Tehranian

14 Chris Skinner

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19 *Attorneys for Plaintiff,*

20 Scott Hargis, d/b/a/ Scott Hargis Photo

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable under the law.

Dated: September 27, 2022

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By: /s/John Tehranian

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